IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE JURISDICTION
WRIT PETITION NO.7207 OF 2003

Mrs.Bhavna N.Bhuta,)
residing at 10-A, Nagardas Park,)
Old Nagardas Road, Andheri (E),)
Mumbai.).. Petitioner.

Vs.

1. State of Maharashtra,)

2. Regional Transport Officer (W),)
Andheri (W), Mumbai.)

3. Transport Commissioner,)
4th Floor, Administrative)
Building, Bandra (E),)
Mumbai.).. Respondents

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S/Shri G.S.Hegde with C.M.Lokesh for the petitioner.

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CORAM : R.M.S.KHANDEPARKAR &
V.M.KANADE, JJ.

DATED : 1ST SEPTEMBER, 2005.

ORAL JUDGMENT : (Per V.M.Kanade, J)

1. By this petition, the petitioner is challenging the order dated 22nd December, 1997 passed by the Transport Commissioner on the application addressed to the Regional Transport Office, and the order dated 12th March, 2001 npassed by the State of Maharashtra in review application under Articles 226 and 227 of the Constitution of India. The petitioner

is also seeking writ of mandamus or any other appropriate writ in the nature of mandamus directing the respondents to accept the non-use intimation of vehicle No.MMP-5651 for the period from 1st June, 1995 till 30th March, 1996.

2. Brief facts for the purpose of deciding this petition are as under:-

. The petitioner’s husband was managing the transport business. However, since 21st June, 1989, he is missing from his residence and his whereabouts are not known since then. The petitioner-wife by her letter dated 31st May, 1995 gave an intimation to the Regional Transport Office authority about the non-use of vehicle in question from 1st June, 1994 to 31st May, 1995. Thereafter, the application was also made giving intimation about the non-use of the said vehicle from 1st April, 1996 to 31st March, 1998. This intimation is dated 30th March, 1996. However, no intimation was given about non-use of the said vehicle for the period from 1st June, 1995 to 30th March, 1996 in time, as required by the provisions of law. This intimation was given on 4th June, 1996. Thereafter, the application was preferred by the petitioner before the Transport Commissioner, as

required under Section 33 of the Bombay Motor Vehicles Tax Act, 1958 for condonation and/or exemption of tax for the said period from 1st June, 1995 to 30th March, 1996. Aggrieved by the aforesaid two orders, the petitioner has filed the present petition under Articles 226 and 227 of the Constitution of India.

3. Learned counsel appearing on behalf of the petitioner has invited our attention to the impugned orders passed by the said authorities and has strenuously urged that the Transport Commissioner and the revisional authority had manifestly erred in not taking into consideration the certificate which was produced by the petitioner. He further submitted that the authorities below had given the findings by relying on the photographs, and therefore, the said findings were liable to be set aside. He has further submitted that the fitness certificate in respect of the said vehicle had expired on 13th May, 1995 and, therefore, in any case, the petitioner could not have used the vehicle after the said period.

4. We are unable to accept the said submission made by learned counsel appearing on behalf of the petitioner. The Transport Commissioner is empowered under Section 33 of the said Act to consider the

application for exemption and/or condonation of delay. From the perusal of the order passed by the Transport Commissioner, it can be seen that he has given cogent reasons for coming to the conclusion that the certificate which was produced by the petitioner could not be relied upon. In his order, he has specifically mentioned that the Vehicle Inspector Shri R.A.Bagadi had inspected the vehicle and had submitted the report in that regard, in which he has stated that the engine of the vehicle was totally damaged, battery was removed off, and the body of vehicle was in rusted condition, full of dust spread over it. The Transport Commissioner in his order, after seeing the photographs produced by the petitioner, has observed that two of the photographs show that the front side tyres were still in proper condition. He further observed that suo-motto inspection was made by the regional transport officer on 12th November, 1997 and the report which was submitted on the basis of the said inspection disclosed that the tyres were found to be filled with air, and therefore, on the basis of the subsequent report, which was given on the suo-motto inspection made by the regional transport officer, the Transport Commissioner was constrained to reject the earlier report which was given by Shri R.A.Bagadi and has observed that the earlier report is not correct.

Thereafter, the Joint Transport Commissioner, Mumbai, before whom the revision was filed against the order of the Transport Commissioner, also has meticulously considered the facts of the case as well as both the reports and after considering the same has rejected the revision application. We, therefore, do not see any reason to interfere with the concurrent findings given by the authorities below.

5. Under the above circumstances, the petition is dismissed. Rule discharged with no order as to costs. Interim relief, if any, stands vacated.

6. Learned counsel appearing on behalf of the petitioner prays for stay to the execution of the order for a period of eight weeks. Prayer rejected.

(R.M.S.KHANDEPARKAR, J)

(V.M.KANADE, J)